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SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. TAMERA ANNE PRAZMA, Defendant.	Criminal Case No. 07CR3030-JAH DATE: JANUARY 14, 2008 TIME: 8:30 p.m. GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTIONS: (1) TO COMPEL DISCOVERY; TOGETHER WITH STATEMENT OF FACTS, MEMORANDUM OF POINTS AND AUTHORITIES AND GOVERNMENT'S MOTIONS FOR RECIPROCAL DISCOVERY

The United States of America, by its counsel, Karen P. Hewitt, United States Attorney, and Paul S. Cook, Assistant United States Attorney, hereby responds to and opposes Defendants' Motion To Compel Discovery. This response and opposition is based upon the files and records of the case, together with the attached statement of facts and memorandum of points and authorities. The Government also hereby files its Motion for Reciprocal Discovery.

I
STATEMENT OF FACTS

On September 14, 2007, at 5:10 p.m., Defendant, wearing a blonde wig and sunglasses, entered the FDIC insured Washington Mutual Bank at 2644 Jamacha Road, El Cajon, California. Defendant waited in line and then approached a teller to whom she handed a sealed envelope. The Victim Teller opened the envelope and found a demand note which read: "DO NOT HIT ALARM - ONLY 100's AND 50's - NO DYE PACKS AND NO BAIT- FOLLOW MY INSTRUCTIONS AND NO ONE GETS HURT 10K - Put in envelope". The terrified teller complied and put approximately $5,700.00 from her teller drawer into a Bank envelope, and gave it to the Defendant, who walked out of the bank through the north lobby doors, leaving behind the demand note.

Defendant got into her Ford extended cab pickup truck, which was parked in the spot closest to the north lobby doors, backed out of the space, and fled from the scene. Another bank employee who watched the Defendant drive away, wrote down the license number (DP0283A), noting that it was a handicapped plate.

An FBI Special Agent, ran DMV records checks on Fords with handicapped license plate numbers and determined that the Defendant and her husband were the registered owners of a Ford F150 pickup with license number 0283A DP. On October 25, 2007, Defendant was taken into custody at her home in Imperial Beach, CA., by the FBI. After being advised of her Miranda rights, she asked for an attorney and questioning ceased. During her booking, agents noticed that she was wearing sandals which appeared to be identical to the ones she was wearing during the robbery. The sandals were seized as evidence.

II
THE GOVERNMENT HAS AND WILL CONTINUE TO COMPLY WITH ITS DISCOVERY OBLIGATIONS

The United States is aware of its discovery obligations, and will continue to comply with its obligations under Brady v. Maryland, 373 U.S. 83 (1963), the Jencks Act (18 U.S.C. §3500) and Rule 16 of the Federal Rules of Criminal Procedure. and will continue to comply with all discovery rules. The United States has provided Defendant with 57 pages of discovery. Regarding some of the specific requests made by the Defendant, the United States responds as follows:

1. Rule 404(b) Evidence

Although the United States is unaware of any 404(b) evidence at this time, should such become known, it will provide Defendant with notice of its intent to present evidence pursuant to Rule 404(b) three weeks before trial or as otherwise ordered by the Court.

2. Evidence Seized and Preservation of Evidence

The Government will preserve all evidence seized from the Defendant, who in turn may make an appointment, at a mutually convenient time, to inspect the evidence.

3. Defendant's Statements

The United States has provided the written reports of the statement the Defendant made during a consensual, custodial interview by law enforcement officers.

4. Tangible Objects

The Government will provide copies of or an opportunity to inspect all documents and tangible things material to the defense, intended for use in the Government's case in chief, or seized from Defendant. Although the government does not concede that the A-file in its entirety is discoverable under Rule 16, it will provide an opportunity for defense counsel to view it.

5. Expert Witnesses

The Government will notify Defendant of its expert witnesses prior to trial, and will comply with Fed. R. Crim. P. 16(a)(1)(G).

6. List and Addresses of Witnesses

The Government has provided Defendant with the investigative reports relating to this crime. These reports include the names of the law enforcement personnel, eye witnesses and other people interviewed as part of the follow-up investigation. The Government will provide Defendant with a list of all witnesses which it intends to call in its case-in-chief at the time the Government's trial memorandum is filed, although delivery of such list is not required. See United States v. Dischner, 960 F.2d 870 (9th Cir. 1992); United States v. Culter, 806 F.2d 933, 936 (9th Cir. 1986); United States v. Mills, 810 F.2d 907, 910 (9th Cir. 1987). Defendant, however, is not entitled to the production of addresses or phone numbers of possible Government witnesses. See United States v. Hicks, 103 F.3d 837, 841 (9th Cir. 1996)("A district court that orders the Government and the defendant to exchange witness lists and summaries of anticipated witness testimony in advance of trial has exceeded its authority under Rule 16 of the Federal Rules of Criminal Procedure and has committed error."); United States v. Thompson, 493 F.2d 305, 309 (9th Cir.1977).

Federal Rule of Criminal Procedure 16 does not require the government (or the defense) to disclose the names and addresses of witnesses pretrial. Indeed, the Advisory Committee Notes reflect that the Committee rejected a proposal that would have required the parties to exchange the names and addresses of their witnesses three days before trial:

> The House version of the bill provides that each party, the government and the defendant, may discover the names and addresses of the other party's witnesses 3 days before trial. The Senate version of the bill eliminates these provisions, thereby making the names and addresses of a party's witnesses nondiscoverable. The Senate version also makes a conforming change in Rule 16(d)(1). The Conference adopts the Senate version.
>
> A majority of the Conferees believe it is not in the interest of the effective administration of criminal justice to require that the government or the defendant be forced to reveal the names and addresses of its witnesses before trial. Discouragement of witnesses and improper contact directed at influencing their testimony, were deemed paramount concerns in the formulation of this policy.

United States v. Napue, 834 F.2d 1311, 1317-19 (7th Cir. 1987) (quoting Rule 16 advisory committee notes) (emphasis added).

The Government will not provide Defendant with names and addresses of witnesses it does not intend to call. The Government is unaware of any witnesses that are favorable to the Defendant.

7. Arrest Reports and Notes

The United States has provided the reports of the federal agents who arrested the Defendant. Agent rough notes, if any exist, will be preserved, but they will not be produced as part of Rule 16 discovery.

A defendant is not entitled to rough notes because they are not "statements" within the meaning of the Jencks Act unless they compromise both a substantially verbatim narrative of a witness' assertions and they have been approved or adopted by the witness. United States v. Bobadilla-Lopez, 954 F.2d 519 (9th Cir. 1992); United States v. Spencer, 618 F.2d 605 (9th Cir. 1980); see also United States v. Griffin, 659 F.2d 932 (9th Cir. 1981).

8. Informant Information

The Government is unaware of any informants in this case.

III

LEAVE TO FILE FURTHER MOTIONS

The Government has no objection to this motion.

IV

THE GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY SHOULD BE GRANTED

The discovery provided to Defendant, at her request, includes documents and objects which are discoverable under Rule 16(a)(1)(E). Consequently, the Government is entitled to discover from the defendant any books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items that are in Defendant's possession, custody or control and which Defendant intends to use in the Defendant's case-in-chief. See Rule 16(b)(1)(A), Fed. R. Crim. P..

Fed. R. Crim. P. 26.2 requires the production of prior statements of all witnesses, except Defendant's. The new rule thus provides for the reciprocal production of Jencks statements. The time frame established by the rule requires the statement to be provided after the witness has testified, as in the Jencks Act. Therefore, the United States hereby requests that Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial to be set by the Court. This order should include any form these statements are memorialized in, including but not limited to, tape recordings, handwritten or typed notes or reports.

V

CONCLUSION

For the above stated reasons, the Government respectfully requests that the Defendant's motions be denied, except where unopposed, and the Government's motion for reciprocal discovery be granted.

Date: January 7, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/Paul S. Cook
PAUL S. COOK
Assistant United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. TAMERA ANNE PRAZMA, Defendant.

Criminal Case No. 07cr3030-JAH

CERTIFICATE OF SERVICE BY MAIL

IT IS HEREBY CERTIFIED that:

I, Helaine Curtis, am a citizen of the United States over the age of 18 years and a resident of San Diego County, California; my business address is 880 Front Street, San Diego, California 92101-8893; I am not a party to the above-entitled action; and subsequent to filing with the Clerk of the Court, I will cause to be deposited in the United States mail at San Diego, California, a copy of **GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTIONS** addressed to:

Stephen D. Demik
Federal Defenders of San Diego, Inc.
225 Broadway, Ste. 900
San Diego, CA 92101

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 7th day of January, 2008.

Helaine Curtis
HELAINE CURTIS